COUCH WHITE
COUNSELORS AND ATTORNEYS AT LAW

Couch White, LLP
540 Broadway
P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600

Kevin M. Lang
Partner

Direct Dial: (518) 320-3421
Telecopier: (518) 426-0376
email: klang@couchwhite.com

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VIA ELECTRONIC FILING

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project; Request for Approval to Use the Traditional Licensing Process

Dear Secretary Bose:

Pursuant to Section 5.3 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 CFR § 5.3, and for the reasons sets forth herein, the City of New York ("City") hereby requests use of the Traditional Licensing Process ("TLP") for the licensing of Project No. 13287-000, the West of Hudson Hydroelectric Project ("Project"). Concurrent with this filing, but under separate cover, the City is filing its Notification of Intent and Pre-Application Document for the Project.

Background

The Project consists of four hydroelectric developments located on the City of New York's water supply system. The four developments and their associated rivers are:

Development	Dam Name	River
Cannonsville	Cannonsville	West Branch Delaware River
Neversink	Neversink	Neversink River
Pepacton	Downsville	East Branch Delaware River
Schoharie	Gilboa	Schoharie Creek

The dams and reservoirs are owned by the City of New York and operated by the New York City Department of Environmental Protection ("NYCDEP"). They are an integral part of the City's water supply system, which provides high quality unfiltered water for New York City and four nearby counties. In total, the water supply system provides

approximately 1.1 billion gallons of high quality drinking water daily to approximately nine million New York State residents (about 50% of the State's total population), as well as the millions of tourists and commuters who visit New York City each year. The four developments are located within the Catskill and Delaware Watershed areas, which provide over 90% of the City's water supply.

Through this Project, the City seeks to develop hydroelectric power on its water supply system while simultaneously maintaining the critical water supply operations in accordance with drinking water needs, conservation releases, directed releases, and water quality standards. Because the water supply functions are paramount, the City intends to integrate the hydroelectric operations into its current practices and to generate electricity only from water that is released for non-water supply purposes.[1]

Likelihood of Timely License Issuance [18 CFR § 5.3(c)(1)(ii)(A)]

The City was issued a Preliminary Permit ("Permit") for the Project on March 20, 2009.[2] The Permit has a three-year term, which expires on March 1, 2012. In order for the City to take advantage of the priority position afforded by the Permit, it must file an Application for License relating to the Project with the Commission and an accompanying Application for 401 Water Quality Certification with the New York State Department of Environmental Conservation prior to March 1, 2012.[3] By its concurrent filing of a Notification of Intent ("NOI") and Pre-Application Document ("PAD"), the City is initiating the prefiling consultation process contemplated by the Commission's regulations.

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[1] During the pre-application process, the NYCDEP intends to assess the extent to which electricity can be economically generated at each development site.

[2] City of New York and Delaware County Electric Cooperative, 126 FERC ¶ 62,215 (2009).

[3] While the City presently intends to seek a single license for the Project, it may seek individual licenses, or exemptions from licensing, for each development. That decision will be made based on the studies, assessments, and evaluations conducted over the next two years, as well as discussions with Commission Staff and interested parties, and the City's analysis of whether and how the hydroelectric facilities can be incorporated into its operations at each development site without jeopardizing its paramount water supply functions.

To meet the March 1, 2012 date, the City, acting through the NYCDEP, will need to circulate a Draft License Application on or before October 1, 2011 (*i.e.*, 150 days prior to filing a Final License Application). To do so, the NYCDEP will need to complete the majority of its licensing studies during the 2010 field season. In order to utilize the full 2010 field season, the NYCDEP will need to have completed issue identification and study scoping by February 2010.

Under the Integrated Licensing Process ("ILP"), issue identification and study scoping will take a minimum of 10 months, as the NYCDEP and the Commission must work through that Process' sequential steps and proscribed timeframes. Thus, under the ILP Process, the NYCDEP will not have a final study plan determination letter until sometime in May 2010, thereby preventing it from undertaking and completing all of the requisite studies during the 2010 field season.

In contrast, the first stage of consultation (including consultation on study plans) under the TLP can be completed in six to seven months. Therefore, the NYCDEP would be able to complete study plan development by February 2010 and commence its licensing studies at the start of the 2010 field season, thereby ensuring that the City can remain on schedule to file a Final License Application on or before the expiration of its Permit on March 1, 2012.

Complexity of the Resource Issues [18 CFR § 5.3(c)(1)(ii)(B)]

The significant issues anticipated by the City in the licensing process for the Project relate to water management, including flow management, operation of, and releases from, the reservoirs, maintenance and enhancement of the fisheries in the Delaware River Basin, and preservation and enhancement of aquatic biota and threatened and endangered species in each of the river systems. While the City recognizes that water management issues of this type are complex, the setting for this Project is different than for most hydroelectric projects because of pre-existing nature of the dams and reservoirs. That is, because of nature of the water supply and the area in which it is located, the City and these development sites are subject to a panoply of regulations and regulatory oversight.[4] Accordingly, much of the information relating to the Project that would be typically requested in a Commission licensing proceeding has already been developed because of this extensive regulatory oversight (*e.g.*, instream flow studies, fisheries studies, operations models), as further described in the section below regarding the availability of information. Moreover, the

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[4] The City's operation of the Delaware water supply system is governed by a Decree issued by the United States Supreme Court in New Jersey v. New York, 347 U.S. 995 (1954) ("1954 Decree") and subject to the regulatory oversight of the Delaware River Basin Commission ("DRBC"), United Stated Environmental Protection Agency, Delaware River Master (an employee of the United States Geological Survey), New York State Department of Environmental Conservation, and New York State Department of Health.

licensing of hydroelectric projects in New York is a mature endeavor with the resource agencies, the NYCDEP, and many of the interested parties all having a long and successful history of identifying issues, scoping studies, and achieving resolutions that satisfactorily address their various respective interests.

Additionally, most, if not all, of the issues that could be raised in this proceeding have existed and been the subject to extensive litigation, discussion, collaboration, and regulatory intervention for decades. As a result, the interested parties have a significant history of working together to address these matters. The flexibility provided by the TLP, as opposed to the strict timeframes dictated by the ILP, better facilitate the necessary collaborative process that will need to occur between and among the resource agencies, interested parties, and the NYCDEP to address these issues during the licensing process. In fact, the prescriptive timeframes of the ILP are likely to unnecessarily hamper such collaborative efforts, leading to discord, divisiveness, and unnecessary litigation (with its concomitant costs and resource burdens) before the Commission.

Level of Anticipated Controversy [18 CFR § 5.3(c)(1)(ii)(C)]

The water management issues highlighted above have been contentious for many years, but many of them have been addressed in the Flexible Flow Management Program ("FFMP"), a plan developed under the auspices of the 1954 Decree and the DRBC. Although the DRBC has yet to incorporate the FFMP into the Water Code for the Delaware River Basin, the NYCDEP has committed to implementing and following its procedures and requirements while the DRBC goes through its regulatory process for codification of the FFMP. As a result, while the NYCDEP expects some interested parties to raise these water management issues before the Commission, the level of controversy should be less than that which existed prior to the development of the FFMP.

The NYCDEP also expects some interested parties to raise other water use issues, such as increasing the amount of water released from the reservoirs and increasing the amount and type of public access to the reservoirs. However, while potentially controversial, such issues have already been addressed by the 1954 Decree and/or the statutory and regulatory requirements that comprehensively govern the water supply system. For example, because the primary function of the reservoirs is to provide drinking water to over nine million people, and because the water supply system is unfiltered,[5] the permissible uses of the reservoirs must be limited.

The resolution of virtually all issues is best addressed through a collaborative process involving the resource agencies, the NYCDEP, and all interested parties, similar to the process that resulted in the FFMP, rather than costly and extensive litigation. For such a

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[5] *See* United States Environmental Protection Agency, *New York City Filtration Avoidance Determination*, July 2007.

collaborative process to succeed, it must be provided flexibility in terms of timing because of the complex nature of these issues and the varying interests of the parties. The strict timeframes of the ILP do not provide the necessary flexibility to foster such a collaborative effort. In contrast, the flexibility provided by the TLP will provide all of the parties more time to address these issues in a mutually agreeable fashion, rather than requiring the Commission to resolve these issues via protracted and undoubtedly contentious litigation.

Relative Cost of the Traditional Licensing Process Compared to the Integrated Licensing Process [18 CFR § 5.3(c)(1)(ii)(D)]

Due to the resource agencies' familiarity with the TLP, the water supply system, and the Delaware River Basin, as well as the time constraints associated with the Permit, and the NYCDEP's commitment to enhanced consultation, the NYCDEP is confident that under the TLP, it will be able to provide the Commission with a Final License Application for the Project at less cost and in less time than that required by the ILP. Factors contributing to this conclusion include: (i) the flexible nature and timelines of the TLP would allow the NYCDEP to work cooperatively with the resource agencies and interested parties to develop information needed to resolve issues; (ii) this same flexibility is most likely to foster consensus-building and settlement or other mutually acceptable resolutions of disputed issues; (iii) a reduced, or potential lack of, need for Commission Staff involvement in the pre-filing stage; (iv) the NYCDEP, resource agencies, and interested parties could focus their efforts on seeking substantive agreements and resolution of the issues and avoid the costs and other resource commitments needed to file comments and undertake other actions needed to comply with the regimented nature of the ILP; (v) by working collaboratively instead of adhering to rigid deadlines, the NYCDEP, resource agencies, and interested parties should be able to focus the issues and the scope of additional studies the NYCDEP must perform; and (vi) because of their familiarity with the issues and the TLP, as well as the flexibility provided by the TLP, the resource agencies and interested parties would be able to reduce their overall costs of participating in the licensing process.

The Amount of Available Information [18 CFR § 5.3(c)(1)(ii)(E)]

As discussed above, the four reservoirs and dams associated with the Project have been operated by the NYCDEP for decades and are already subject to extensive requirements and regulatory oversight. As a result, issues relating to the Project and information that would otherwise be requested in the course of the licensing process have, largely, already been studied and/or developed. A voluminous amount of data and information is already available regarding the dams and reservoirs, rivers, river basins, watersheds, fisheries, upland habitats, operational impacts on the surrounding environment, and other related topics. Moreover, numerous studies have been conducted by the NYCDEP, state agencies, federal agencies, the DRBC, and others.

The TLP will allow interested parties to understand the breadth, nature, and content of this pre-existing information, which should lead to agreements to narrow the issues and the scope of additional studies to be undertaken. The prescriptive timeframes of the ILP will unnecessarily restrict the ability of interested parties to properly comprehend the large body of information and data that is already available, and to appropriately tailor their study and other information requests

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Other Pertinent Factors [18 CFR § 5.3(c)(1)(ii)(F)]

For budgetary and planning purposes, as well as to adequately communicate the process to interested parties, the NYCDEP respectfully requests that the Commission provide a decision on this request to use the TLP for the Project within 60 days of the filing of this request. Granting the City's request will not infringe on the ability for resource agencies, interested parties, or the public to provide comments on the Project, or on their ability to have their comments addressed during the licensing process.

For all of the foregoing reasons, the City respectfully requests that the Commission grant this request and authorize the City to use the TLP for the licensing of the Project

As required by 18 CFR § 5.3(d)(1), the NYCDEP is concurrently providing copies of this request to all affected resource agencies, Indian tribes, and potentially interested parties. As required by 18 CFR § 5.3(d)(2), the NYCDEP is publishing notice of this request simultaneously with the publication of notice of availability of the NOI and PAD in five local newspapers of general circulation in the counties where the Project is located.

By this letter, the City is notifying the resource agencies, Indian tribes, and potentially interested parties that comments on this application must be provided to the Commission and the City no later than 30 days following the filing date of this document. All comments should reference Project No. 13287-000 – City of New York West of Hudson Hydroelectric Project, and they should address, as appropriate to the circumstances of the request, the following topics:

- Likelihood of timely license issuance;
- Complexity of the resource issues;
- Level of anticipated controversy;
- Relative cost of the TLP compared to the ILP;
- The amount of available information and potential for significant disputes over studies; and
- Other factors believed by the commenter to be pertinent.

Comments should be submitted to the Commission electronically pursuant to 18 CFR § 385.2003(c), or by sending an original and eight copies to:

Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Copies of the comments should be sent to the undersigned at klang@couchwhite.com or the address set forth above, and to NYCDEP at zinniar@dep.nyc.gov or to Zinnia Rodriquez, NYCDEP, 19th Floor, 59-17 Junction Boulevard, Flushing, NY 11373-5108.

Respectfully submitted,

COUCH WHITE, LLP

Kevin M. Lang

KML/glm
cc: Distribution List
Kathryn Garcia
Anthony Fiore, P.E.
Paul V. Rush, P.E.
John Vickers, P.E.
Robert Craig, Esq.
Linda Geary, Esq.
Thomas Sullivan, P.E. (Gomez and Sullivan)
Mark Wamser, P.E. (Gomez and Sullivan)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail, the foregoing Request for Approval to Use the Traditional Licensing Process upon each person designated for service on the distribution list set forth in Appendix E of the Pre-Application Document for the City of New York West of Hudson Hydroelectric Project compiled in accordance with the requirements of 18 C.F.R §§ 5.3(d)(1), 5.5(c) and 5.6(a).

Dated at Albany, New York, this 13th day of August, 2009.

Gloria L. Mack

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